IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.26266 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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ST XAVIER'S COLLEGE & 1 - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR AMIT M PANCHAL with MR HARDIK GUPTA for M/S TRIVEDI & GUPTA for Petitioner(s) : 1 - 2.
MR HEMANG H PARIKH, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 04/12/2007
ORAL JUDGMENT

(1) **RULE**.The petition is taken up for final hearing and disposal today in light of the narrow scope of controversy between the parties. The learned Assistant Government Pleader appearing for the respondents is

directed to waive service.

(2) When the petition was called out for hearing the learned Assistant Government Pleader has made a request for adjourning the matter on the ground that para-wise remarks have not been received. The request has been turned down by the Court considering the fact that notice was issued on 15.10.2007 making it returnable on 20.11.2007. Thereafter, the matter was adjourned to 28.11.2007. Again on 28.11.2007 the request made by the learned Assistant Government Pleader for time had been granted and the matter had been peremptorily fixed in presence of the learned Assistant Government Pleader today. In the circumstances, there is no question of granting request for adjournment. Even otherwise, the issue involved in the present matter is purely based on reading of the impugned order with the Government Circulars, on which reliance has been placed by both the sides and no question of facts is involved so

as to require filing of any affidavit.

(3) Petitioner No.1-College is run by petitioner No.2-Society. On 18.10.2006 respondent authority granted 'No Objection Certificate' for appointment of *Adhyapak Sahayaks* in the subjects of Botany / Zoology, Chemistry and English from persons belonging to Scheduled Tribes. Condition No.5 of the said sanction letter stated that advertisements have to be issued in accordance with Circular dated 14.03.1989 followed by Circular dated 04.06.1998 issued by the Education Department. On 07.11.2006 such advertisements came to be published in Gujarati daily Sandesh, Ahmedabad edition and Times of India, Ahmedabad, having circulation in the whole of the State of Gujarat. After due process was followed the petitioners sought sanction of the appointments to be made of the persons selected at the interview held by the petitioners in presence of the government nominee. Vide communication dated 24.07.2007

respondent No.2 cancelled the interviews conducted by the petitioners directing the petitioners to undertake the entire recruitment process afresh. As the petitioners' representation against the said order did not yield result the petitioners approached this Court by way of Special Civil Application No.21970 of 2007. Vide order dated 27.08.2007 this Court allowed the petition holding that the respondent authority having not heard the petitioners before passing the impugned order dated 24.07.2007 will decide the matter afresh without being influenced by earlier order dated 24.07.2007 after hearing the petitioners. Subsequent thereto the petitioners have been heard through their representatives and impugned order dated 24.09.2007 came to be made once again holding that the entire recruitment process is required to be undertaken afresh.

(4) On behalf of the petitioners it was contended by the learned advocate that the impugned

order dated 24.09.2007 is contrary to the No Objection Certificate issued on 18.10.2006 as well as Circular dated 14.03.1989 and Circular dated 04.06.1998. That in fact there were no valid reasons for quashing the recruitment process and not sanctioning the appointment of persons selected at the interviews so conducted.

(5) Learned Assistant Government Pleader appearing on behalf of the respondent authorities has submitted that the petitioners were required to issue advertisements in two leading dailies, one of them having wide circulation in the entire State of Gujarat and other one having wide circulation in the local area in which the institution is situated. That as could be seen from the impugned order the petitioners had issued advertisements in 'Times of India', Ahmedabad and 'Sandesh', Ahmedabad Edition which would go to show that the requirements stipulated by the circulars

were not fulfilled. Emphasis was placed on the fact that in so far as Times of India was concerned, the publication was only in Ahmedabad Edition and similarly even Sandesh carried advertisements only in Ahmedabad Edition. Thus, violating the requirement of one of the newspapers having State-wide circulation. That the underlying idea of issuing advertisements in leading daily having wide circulation in the entire State was to ensure that interested persons would become aware of the posts being advertised for which they may be entitled to apply. Hence, it was contended that the impugned order was justified and no interference was warranted.

(6) In rejoinder the learned advocate for the petitioners has invited attention to communication dated 30.07.2007 whereunder explanation was tendered that though Times of India, Ahmedabad edition was the newspaper in which advertisement had been issued the said newspaper had circulation in the entire State

of Gujarat and for this purposes certificate obtained from Times of India was available at Annexure-M (Colly.) wherein it was certified that Times of India, Ahmedabad edition had wide circulation all over Gujarat. It was, therefore, submitted that the objection raised by the respondent authority was without any basis and the petitioners had complied with all the requirements of the circulars issued by the department.

(7) As can be seen from the impugned order it is recorded that for appointment to the sanctioned posts to ensure that candidates having higher educational qualifications, who are otherwise meritorious can make applications the circulars provide for publication of advertisements in leading dailies having wide circulation. The immediately next sentence that follows states that for this purpose it is necessary to publish advertisements in two newspapers published in Gujarati language. In so far as

this requirement of advertisements being published in only two Gujarati newspapers is concerned, the learned Assistant Government Pleader was called upon to explain the basis on which the said observation in the impugned order has been made as neither the circulars, nor the sanction letter issued by the respondent authority stipulated any such condition. The only requirement being publication of advertisements in a leading daily having wide circulation all over Gujarat and a leading daily having wide circulation in the local area where the institution is situated.

(8) On facts, it was not disputed that Sandesh is a leading daily having wide circulation in the local area. The only objection that was highlighted by the learned Assistant Government Pleader was that Times of India, Ahmedabad edition could not be treated as a newspaper having wide circulation all over Gujarat. In light of the certificate issued by

the said publication (Annexure-M), the said objection cannot be sustained. In the circumstances, it is apparent that the impugned order has been passed by incorporating an extraneous condition which is not having any backing in so far as either the Circular dated 14.03.1989 is concerned, or the circular dated 04.06.1998 is concerned. That all the editions of a newspaper should carry the advertisement is a condition which is to be read in context of the concerned edition being available for circulation in the entire State of Gujarat. There cannot be insistence that editions of a particular newspaper outside the State of Gujarat also should carry the advertisement. There is no other objection raised in the impugned order. Nor is there any evidence on record to dispute or disprove the certificate issued by Times of India. In the circumstance, the impugned order suffers from the vice of taking into consideration irrelevant factors and stands vitiated.

(9) Accordingly, impugned order dated 24.09.2007 is quashed and set aside. The respondent authority is directed to undertake the process of granting approval to the three posts for which the interviews have been held in accordance with law. Such an exercise shall be completed within a period of 10 (ten) days from today. The learned Assistant Government Pleader is directed to convey the order made by the Court. The respondent authority shall take action on the basis of a simple copy of this judgment without waiting for a certified copy.

(10) The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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